Tan Sri Joseph Kurup v Danny Anthony Andipai & Anor

FEDERAL COURT (KOTA KINABALU) — CIVIL APPEAL NO 01(F)–19 OF 2008
ALAUDDIN PCA, ARIFIN ZAKARIA CJ (MALAYA) AND NIK HASHIM FCJ
13 MARCH 2009

Election — Petition — Application for declaration that elections were null and void — Whether precise provision of written law relating to conduct of election that had been breached pleaded — Whether failure to deliver nomination papers within time stipulated by returning officer — Whether decision of returning officer final and conclusive

The Attorney General of Malaysia had applied to intervene in this appeal by virtue of being the legal adviser of the Government of Malaysia and also due to public interest pertaining to the conduct of the general election in Malaysia. The general election was held on 8 March 2008. The appellant, a Barisan Nasional candidate, won a parliamentary seat of Pensiangan uncontested after the nomination papers of the respondent; an independent candidate, was rejected by the returning officer ('RO') on the grounds that it was submitted late. The respondent successfully obtained a declaration that the appellant's election be declared void under s 32(b) of the Election Offences Act 1954 ('the Act') and that the appellant was not duly returned as the wining candidate for the parliamentary seat. The learned election judge surmised that wrongful rejection of the respondent's nomination papers breached his constitutional right to participate in the election and the written law relating to the conduct of the election. The appellant contended that the respondent did not plead in his petition precisely which provisions of the written law relating to the conduct of any election that had been breached by the appellant. The appellant further argued that the respondent did not comply with the provisions of the written law as his nomination papers were submitted beyond the time frame in accordance to reg 6(2)(b) of the Elections (Conduct of Elections) Regulations 1981 ('the Regulations'). The intervener also submitted that the RO was statutorily empowered by reg 7(4) of the Regulations to decide on any objection made in writing which was made in favour of the appellant. However, the respondent rebutted, inter alia, that s 4 of the Election Act 1958 (EA) the RO was subjected to the direction of the Deputy Director and the Deputy Director had the discretion on the acceptance of nomination papers so that the election was held in a fair and impartial manner, hence, the appeal.

Held, allowing the appeal with costs:

(1) In order to fall within the ambit of the provisions of s 32(b) of the Act, it is incumbent upon the petitioner to plead in his election petition that there had been non-compliance with the provisions of any written law relating to the conduct of any election and such non-compliance affected the result of the election. The respondent's failure to specify which provisions of the written law relating to the conduct of the election had not been complied with by the RO was fatal. Since the mandatory requirement stipulated by s 32(b) of the Act had not been met by the respondent, the learned judge ought to have dismissed the respondent's petition outright (see paras 9, 10, 13, 14 & 15).

(2) The provisions of regs 6(2)(b) and 6(2A)(a) of the Regulations does not give the RO any discretion or flexibility to accept nomination papers not delivered within the stipulated time. Regulation 6 of the Regulations is very stringent as to timing of the delivery of the nomination papers and specifies the consequences of failing to do so. The intention of the Legislature was clearly reflected by the use strong words 'shall not accept' in reg 6(2A)(a) of the Regulations. Thus, it is fallacious to treat reg 6 of the Regulations as a mere guideline as it is the law that governs the proceedings relating to conduct of elections on nomination day. The directive of the deputy director directing the RO to accept the respondents' nomination papers outside the time frame was thus unlawful. The learned judge was therefore erroneous when he held that the power of the Election Commission overrides the Regulations. It was also not within the purview of the Election Commission to effect any amendments to election regulations to the conduct of elections without due observation of s 16 of the EA (see paras 21& 24).

(3) The RO is statutorily empowered by reg 7(4) of the Regulations to decide on the validity of every objection with the least possible delay and reg 7(5) of the Regulations provides that the decision of the RO shall be final and conclusive for the purpose of the election. The responsibility for submitting the nomination papers to the RO within the time frame lies with the candidates. No statutory duty is imposed on the RO to ensure that all nomination papers of all candidates present at the nomination centre must be accepted but only to ensure that no nomination papers are to accepted after the time frame as stipulated in reg 6(2A)(a) of the Regulations. As such the fault lay with the respondent for failing to deliver his nomination papers within the stipulated time to the RO (see paras 7& 20).

[Bahasa Malaysia summary

Peguam Negara Malaysia telah memohon untuk mencelah dalam rayuan ini sebagai penasihat undang-undang Kerajaan Malaysia dan juga kerana kepentingan awam berkenaan pengendalian pilihan raya umum di Malaysia. Pilihan raya umum itu berlangsung pada 8 Mac 2008. Perayu, calon Barisan Nasional, menang tanpa bertanding kerusi parlimen di Pensiangan setelah kertas pencalonan responden, seorang calon bebas, ditolak oleh pegawai pengurus (PP) atas alasan dihantar lewat. Responden berjaya memperoleh suatu perisytiharan bahawa pemilihan perayu tidak sah di bawah s 32(b) Akta Kesalahan Pilihanraya 1954 ('Akta tersebut') dan bahawa perayu tidak diiktiraf sebagai calon yang menang bagi kerusi parlimen tersebut. Hakim pilihan raya yang bijaksana merumuskan bahawa penolakan kertas pencalonan responden melanggar hak perlembagaannya untuk menyertai pilihan raya tersebut dan juga undang-undang bertulis berkaitan perjalanan pilihan raya. Perayu berhujah bahawa responden tidak menghujah dalam petisyennya secara terperinci peruntukan mana dalam undang-undang bertulis yang berkaitan dengan perjalanan mana-mana pilihan raya yang telah dilanggar oleh perayu. Perayu seterusnya membahaskan bahawa responden tidak mematuhi peruntukan undang-undang bertulis kerana kertas pencalonannya diserahkan melampaui masa yang ditetapkan menurut peraturan 6(2)(b) Peraturan-Peraturan Pilihan Raya (Perjalanan Pilihan Raya) 1981 ('Peraturan-Peraturan tersebut'). Pencelah juga menyatakan bahawa PP mempunyai kuasa statutori di bawah peraturan 7(4) Peraturan-Peraturan tersebut untuk memutuskan sebarang bantahan secara bertulis yang mana telah dibuat bagi pihak perayu. Tetapi, responden membalas, inter alia, bahawa s 4 Akta Pilihanraya 1958 ('AP') menyatakan bahawa PP tertakluk kepada arahan Penolong Pengarah dan Penolong Pengarah mempunyai budi bicara dalam penerimaan kertas pencalonan agar pilihanraya tersebut dapat dijalankan dengan adil dan saksama, maka rayuan ini.

Diputuskan, membenarkan rayuan dengan kos:

(1) Untuk berada dalam lingkungan peruntukan s 32(b) Akta tersebut, adalah penting bagi pempetisyen menghujah dalam petisyen pilihan rayanya bahawa wujudnya ketidakpatuhan terhadap peruntukan mana-mana undang-undang bertulis berkaitan dengan perjalanan mana-mana pilihan raya dan ketidakpatuhan tersebut menjejaskan keputusan pilihan raya tersebut. Kegagalan responden memperincikan peruntukan mana bagi undang-undang bertulis berkaitan dengan perjalanan pilihan raya tersebut yang tidak dipatuhi oleh PP tersebut membawa padah. Memandangkan kehendak mandatori di bawah

s 32(b) Akta tersebut tidak dipenuhi oleh responden, hakim yang bijaksana seharusnya menolak terus petisyen responden (lihat perenggan 9, 10, 13, 14 & 15).

(2) Peruntukan peraturan-peraturan 6(2)(b) dan 6(2A)(a) Peraturan-peraturan tersebut tidak memberikan PP sebarang budi bicara atau kelonggaran untuk menerima kertas pencalonan yang tidak diserahkan dalam masa yang ditetapkan. Peraturan 6 Peraturan-peraturan tersebut amatlah ketat tentang pengaturan masa penyerahan kertas pencalonan dan menetapkan kesan akibat kegagalan mematuhinya. Niat perundangan adalah jelas dengan penggunaan kata-kata 'shall not accept' dalam peraturan 6(2A)(a) Peraturan-peraturan tersebut. Oleh itu, adalah tidak betul apabila menganggap peraturan 6 Peraturan-Peraturan tersebut sekadar garis panduan kerana itu merupakan undang-undang yang mentadbir prosiding berkaitan perjalanan pilihan raya pada hari penamaan calon. Arahan daripada penolong pengarah mengarahkan PP menerima kertas pencalonan responden di luar masa yang ditetapkan adalah tidak sah. Maka, hakim yang bijaksana adalah salah apabila memutuskan kuasa Suruhanjaya Pilihanraya mengatasi Peraturan-Peraturan tersebut. Suruhanjaya Pilihanraya tidak berkuasa untuk membuat sebarang pindaan terhadap peraturan-peraturan pilihan raya berkaitan dengan perjalanan pilihan raya tanpa memberi perhatian kepada s 16 AP (lihat perenggan 21& 24).

(3) PP diberi kuasa statutori di bawah peraturan 17(4) Peraturan-peraturan tersebut untuk memutuskan kesahan setiap bantahan tentang kemungkinan kelewatan dan peraturan 17(5) Peraturan-Peraturan tersebut menyatakan bahawa keputusan PP adalah muktamad dan tidak dapat dipertikaikan bagi maksud pilihan raya ini. Tanggungjawab menyerahkan kertas pencalonan kepada PP dalam tempoh masa yang ditetapkan merupakan tanggungjawab calon-calon. Tiada kewajipan statutori terhadap PP untuk memastikan bahawa kertas pencalonan kesemua calon yang hadir di pusat penamaan mesti diterima tetapi hanya memastikan tiada kertas pencalonan yang harus diterima selepas waktu yang ditetapkan oleh peraturan 6(2A)(a) Peraturan-Peraturan tersebut. Oleh itu, kesalahan adalah pada pihak responden kerana gagal menyerahkan kertas pencalonannya dalam masa yang ditetapkan oleh PP (lihat perenggan 7 & 20).]

Notes

For cases on application for declaration that elections were null and void, see 6 *Mallal's Digest* (4th Ed, 2007 Reissue) paras 2006–2012.

Cases referred to

Bong Geok Beng v Ahmad Nordin bin Mohamed Amin & Anor and 3 other petitions [1980] 1 MLJ 167, HC (refd)

Chong Thain Vun v Watson & Anor and 2 other appeals [1968] 1 MLJ 65, HC (refd)

Cutting v Windsor (1924) 40 TLR 395 (folld)

Dato' Ismail Kamus v Pegawai Pengurus Pilihanraya, Zainal Abidin Azim & Ors [2005] 3 MLJ 193; [2005] 2 CLJ 237, FC (refd)

Dr Lee Chong Meng v Abdul Rahman bin Hj Abdullah, Returning Officer & Ors [2000] 6 MLJ 98, HC (refd)

Harjit Singh v S Umrao Singh AIR 1980 SC 701, SC (folld)

Muip bin Tabib v Dato James Wong; Wan Hamid bin Tuanku Surur v Francis Loke [1971] 1 MLJ 246, HC (refd)

Legislation referred to

Elections Act 1958 ss 4, 5, 16

Elections (Conduct of Elections) Regulations 1981 regs 6, 6(2), (2)(b), (2A)(a), 7(4), (5)

Election Offences Act 1954 s 32(b)

Election Offences Ordinance 1954

Election Petition Rules 1954

Municipal Corporations Act 1882 (UK) r 7 Part II Third Schedule

Representation of the People Act (1951) of India s 33(1)

Appeal from: Election Petition No K26–02 of 2008 (Election Court, Kota Kinabalu)

Firoz Hussein (Mariati Robert & Lau Cheung Hoon with him) (Kurup Robert Marcus & Co) for the appellant.

Ansari Abdullah (Chau Chin Tang, Jonathan Yassin & Erveana Ansari with him) (Ansari & Co) for the respondent.

Azizah Nawawi (Amarjeet Singh with her) (Senior Federal Counsel, Attorney General's Chambers) for the intervener.

Nik Hashim FCJ (delivering judgment of the court):

APPLICATION FOR INTERVENTION BY THE ATTORNEY GENERAL

[1] At the outset of the appeal, the learned Attorney General of Malaysia, by encl 10(a), applied to intervene in the appeal. After hearing the parties, we allowed the application, with costs in the cause, on the ground that this appeal involved public interest pertaining to the conduct of the general election in the country, and that the Attorney General, being the legal adviser to the government, was most appropriate to intervene and be added as a party

in the appeal.

BACKGROUND

[2] In the last 12th general election of 8 March 2008, the appellant, who was the Barisan Nasional candidate, won the parliamentary seat of P182 Pensiangan uncontested after the nomination papers of the respondent of Parti Keadilan Rakyat and Saineh bin Usau who stood as an Independent candidate, were rejected by the returning officer Bubudan OT Majalu ('the RO') on the grounds that they were submitted late.

[3] The respondent filed an election petition dated 9 April 2008 seeking a declaration that the election of the appellant be declared void under s 32(b) of the Election Offences Act 1954 ('the Act').

[4] On 8 September 2008, the learned election judge David Wong Dak Wah declared that the election result of the Pensiangan parliamentary seat was void under s 32(b) of the Act, and that the appellant was not duly returned as the winning candidate for the parliamentary seat and ordered costs to the respondent.

[5] In his 36-page judgment, the learned judge held that the wrongful rejection of the nomination papers of the respondent had breached the respondent's constitutional right to participate in the election and the written law relating to the conduct of the election under the Act. The decision of the Deputy Director of Sabah Election Commission to accept the respondent's nomination papers was final and could not be overturned by the RO under the pretext that there was an objection during the objection period. The learned judge ruled that the deputy director was exercising a power provided by law in making the decision and the RO's decision to uphold the objection was wrong in law.

CONTENTIONS OF PARTIES

[6] Learned counsel for the appellant, Encik Firoz Hussein, contended that the respondent had never pleaded in his election petition precisely which provisions of the written law relating to the conduct of any election had been breached. Further, the learned judge did not rule in his judgment as to which provisions of the written law relating to the same had not been complied with. In this case, learned counsel said the respondent himself did not comply with the provisions of the written law as he had submitted his nomination papers at 10.25am instead of the time frame between 9am and 10am as provided for in reg 6(2)(b) of the Elections (Conduct of Elections) Regulations 1981 ('the Regulations').

[7] Learned senior federal counsel, Puan Azizah Haji Nawawi, for the intervener said that the RO was statutorily empowered by reg 7(4) of the Regulations to decide on any objection made in writing, which the RO decided in favour of the appellant.

[8] In rebutting the appellant's and the intervener's arguments, learned counsel for the respondent, Tuan Hj Ansari Abdullah, submitted that under s 5 of the Elections Act 1958 ('Act 19'), it was the duty of the Election Commission to ensure all the election officers act in a fair and impartial manner. Under s 4 of Act 19 the RO was subjected to the direction of the said Deputy Director of the Sabah Election Commission. He added that although under the Regulations nomination papers must be submitted within the time frame, the deputy director had the discretion as to the acceptance of nomination papers so that the election was held in a fair and impartial manner. In this case, learned counsel said that there was a directive from the said deputy director to accept nomination papers of candidate who came to the nomination centre before 10am.

DECISION OF THIS COURT

[9] The respondent's election petition was based on s 32(b) of the Act which states:

> Avoidance of election petition
>
> 32 The election of a candidate at any election shall be declared to be void on an election petition on any of the following grounds only which may be proved to the satisfaction of the Election Judge:
>
> (a) ...
>
> (b) non-compliance with the provisions of any written law relating to the conduct of any election if it appears that the election was not conducted in accordance with the principles laid down in such written law and that such non-compliance affected the result of the election.
>
> (c) ...
>
> (d) ...
>
> (e) ...

[10] Alauddin Mohd Sheriff FCJ (now PCA), in delivering the judgment of the Federal Court case of *Dato' Ismail Kamus v Pegawai Pengurus Pilihanraya, Zainal Abidin Azim & Ors* [2005] 3 MLJ 193; [2005] 2 CLJ 237 (FC), opined on s 32(b) of the Act at pp 199–200 (MLJ); at p 245 (CLJ) as follows:

The provision clearly places the burden on the appellant to prove to the satisfaction of the election judge that:

(i) there has been non-compliance with the provision of the written law relating to the conduct of the election; and

(ii) the said non-compliance has affected the result of the elections.

There is no doubt in our minds that the two (2) limbs in s 32(b) are to be read conjunctively and not disjunctively.

There is no dearth of authorities to support such interpretation.

[11] In *Bong Geok Beng v Ahmad Nordin bin Mohamed Amin & Anor and 3 other petitions* [1980] 1 MLJ 167 (HC), a number of election petitions had been brought alleging that the returning officer had wrongly rejected the nominations of the petitioners and had declared the return of the other candidates unopposed. Wan Yahya J (as he then was) held that:

Section 32 of the Election Offences Act 1954, requires the petitioner not only to state specifically in his petition which provisions of the law on which non-compliance is alleged to have taken place but also to supply adequate information as to how the respondent is said to have offended that law. In these cases the petitions were defective for want of specific charges.

[12] Similarly in *Muip bin Tabib v Dato James Wong; Wan Hamid bin Tuanku Surur v Francis Loke* [1971] 1 MLJ 246 (HC), the petitioner therein relied on s 32 of the Election Offences Ordinance 1954 and alleged, inter alia, that the returning officer was wrong in rejecting the nomination papers. Justice BTH Lee in dismissing the petitions, held that:

the petitions were defective as neither of them alleged non-compliance with the provisions of any written law relating to the election nor was there any allegation that the result of the election had been affected.

At p 247 of the judgment Justice BTH Lee further said that:

To show that the returning officer was guilty of 'non-compliance with the provisions of any written law relating to any election ...', it is I think necessary for the petitioners to refer to the specific written law. In neither of the petitions has any reference been made to such written law.

[13] On the statutory requirements of an election petition, Augustine Paul J (now FCJ) in *Dr Lee Chong Meng v Abdul Rahman bin Hj Abdullah, Returning Officer & Ors* [2000] 6 MLJ 98 (HC) at p 104 reminded as follows:

the statutory requirements of an election must be strictly observed because an election dispute is a statutory proceeding unknown to the common law or equity.

A See also *Chong Thain Vun v Watson & Anor and 2 other appeals* [1968] 1 MLJ 65 (HC) where if was held that the Election Petition Rules 1954 ('the Rules') are mandatory and require strict compliance therewith. Non-compliance with the provisions of the Rules or the Election Offences Ordinance 1954 must necessarily result in a jurisdictional defect and the B court has no power to entertain the petitions.

[14] Likewise here, s 32(b) of the Act is mandatory in its provisions and as such, its provisions must be strictly adhered to and obeyed. Thus, in order to fall within the ambit of the provisions, it is incumbent on the petitioner to C plead in his election petition that there has been non-compliance with the provisions of any written law relating to the conduct of any election and such non-compliance affected the result of the election. The alleged non-compliance of any written law must be specified clearly in the petition as failure to specify such non-compliance will render the petition defective D and invalid.

[15] In the present case, the respondent had pleaded the facts and the grounds of the petition but without specifying which provisions of written law relating to the conduct of the election had not been complied with by the E RO. The failure is fatal. Parties are bound by their pleadings. Since the mandatory requirements stipulated by s 32(b) of the Act had not been met, the learned judge ought to have dismissed the respondent's petition outright.

F **[16]** For ease of reference, we reproduce reg 6 of the Regulations which reads as follows:

> Proceedings on nomination day
>
> (1) ...
>
> G (2) The nomination papers in triplicate must be delivered to the returning officer —
>
> (a) at the place of nomination; and
>
> H (b) *between the hours of nine o'clock and ten o'clock in the forenoon* on the day of nomination, by the candidate and his proposer and seconder or by any two or any one of them.
>
> (2A) The returning officer *shall not accept* the nomination papers of any candidate —
>
> I (a) which are not delivered within the period specified in paragraph (2)(b);
>
> (Emphasis added.)

[17] On the legal effect of reg 6(2) and 6(2A)(a) of the Regulations, the learned judge ruled as follows: A

> In my view the only way to avoid such chaos and abuse is to treat reg 6(2) and 6(2A)(a) of the 1981 Regulations as mere guidelines which ought to be followed but if the circumstances demand acceptance of nomination papers after 10am, the second respondent (the RO) or the Election Commission can accept those nomination papers. This was what the Deputy Director of the Election Commission in her wisdom did in this case and in my view she cannot be faulted. Her decision was what common sense demanded in the circumstances and likewise so in my interpretation of reg 6(2) and 6(2A)(a) of the 1981 Regulations. Further if one looks at s 16 of the Elections Act, the power of the Election Commission overrides the regulations. It provides as follows: B C
>
> 16 Power to make regulations relating to the conduct of elections.
>
> (1) The Election Commissions may with the approval of the Yang di-Pertuan Agong make regulations for the conduct of elections to the Dewan Rakyat and the Legislative Assemblies, and for all matters incidental thereto. D
>
> (2) Without prejudice to the generality of the foregoing powers the regulations may — E
>
> (a) ...
>
> (b) prescribe the procedure for the nomination of candidates and for the making of and decision on, objections to any nominations; F
>
> (bb) ...
>
> Hence in making the decision to accept the nomination papers of the Petitioner, Saineh Usau and Paul Gitang, the Deputy Director was exercising a power provided for by law. G

[18] The words in this reg 6 are very clear and unambiguous and effect must be given to the meaning of those words. Regulation 6(2)(b) imposes an absolute obligation on the candidate to deliver his nomination papers to the RO between 9am–10am. The consequence of not delivering the nomination papers within the time stipulated in reg 6(2)(b) is fatal as spelt out in regulation 6(2A)(a) of the Regulations, which expressly forbids the RO to accept nomination papers which are not delivered within the time specified. The intention of the legislature is clearly reflected by the use of strong words 'shall not accept' in reg 6(2A)(a) of the Regulations. H I

[19] The time of the delivery of the nomination papers is also of the essence because reg 7(1)(b) of the Regulations expressly provides that a

ground of objection to the nomination papers is that the nomination papers were not delivered in accordance with the Regulations.

[20] It is also important to note that the RO is statutorily empowered by reg 7(4) of the Regulations to decide on the validity of every objection with the least possible delay; whereas reg 7(5) provides that the decision of the RO shall be final and conclusive for the purpose of the election in respect of which the proceedings are being held. In this case, the objection was grounded on the fact that the respondent's nomination papers were delivered at 10.25am, which was outside the time stipulated under reg 6(2)(b) of the Regulations.

[21] Thus, by its provisions, reg 6(2)(b) and (2A)(a) does not give the RO any discretion or flexibility to accept nomination papers not delivered within the time stipulated. Regulation 6 is very stringent as to timing of the delivery of the nomination papers and specifies the consequences of failing to do so. It is fallacious therefore to treat reg 6 as a mere guideline. Regulation 6 is the law that governs the proceedings relating to conduct of elections on nomination day.

[22] In *Cutting v Windsor* (1924) 40 TLR 395, a similar provision to reg 6(2)(b) of the Regulations was considered and was held to be mandatory. In that case, r 7 in Part II of the Third Schedule to the UK Municipal Corporations Act 1882 provided:

> Every nomination paper must be delivered by the candidate ... at the town clerk's office, ... seven days at least before the day of election, and before 5 o'clock in the afternoon of the last day for delivery of nomination papers.

It was held in that case that r 7 was mandatory. It was not within the discretion of the town clerk to receive nomination papers after the hour specified in the rule, nor was it competent to the court to say that the delivery of a nomination paper after the prescribed time constituted a good nomination.

[23] The case of *Cutting*, was followed by the Supreme Court of India in *Harjit Singh v S Umrao Singh* AIR 1980 SC 701 (SC) in relation to s 33(1) of the Representation of the People Act (1951) of India, which similarly provided for a specified period of the day, ie between 11 o'clock in the forenoon and three o'clock in the afternoon, for nomination papers to be delivered. Shinghal J said at p 704:

> (8) We have considered the argument that such a defect was not of a substantial character within the meaning of sub-s (4) of s 36 of the Act, but we are unable to uphold it in the face of the clear

requirement of ground (b) of sub-s (2) of s 36, referred to above. It has to be appreciated that any other view would make the requirement for the presentation of the nomination papers before the last date for making nominations, and within the specified period of time, unworkable for it will not then be possible to draw a line up to which the delay in the delivery of the nomination papers could be condoned. In fact if the requirement of the law in that respect is not observed, and its breach is considered to be a defect which was not of a substantial character, it may be permissible to go to the extent of arguing that the nomination paper may be filed even up to the date and time fixed for the scrutiny of the nominations. That would not only cause administrative inconvenience but put the other candidates to a serious disadvantage for they would not be able to prepare themselves for any objection they may like to raise to the validity of the nomination at the time of the scrutiny of the nominations. We have no hesitation therefore in taking the view that the failure to comply with the requirement that the nomination papers shall be delivered between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon is mandatory and the returning officer was justified in rejecting the nomination paper in question because of its breach.

[24] So applying the principles in *Cutting* and *Harjit Singh*, to the facts of the present case, the requirement that the nomination papers must be delivered between the hours of nine o'clock and ten o'clock in the forenoon is mandatory and therefore, the RO was justified in upholding the objection and rejecting the respondent's nomination papers for non-compliance with reg 6(2)(b) of the Regulations. While it is true that the Election Commission has the power of control and supervision over the conduct of the elections and that the RO is subjected to the direction of the Election Commission under ss 5 and 4 of Act 19 respectively, nevertheless, such power and direction must be exercised according to law. In the instant case, the directive of the Deputy Director of the Sabah Election Commission directing the RO to accept the respondent's nomination papers outside the time frame was contrary to reg 6(2)(b) and 6(2A)(a) of the Regulations and was thus unlawful. The learned judge was therefore erroneous when he held that the power of the Election Commission overrides the Regulations. Nothing in the law provides for such a power. Besides, it is not within the purview of the Election Commission to effect any amendment to election regulations relating to the conduct of elections without due observation of s 16 of Act 19.

[25] While it is true that there were 12 citizens of the land who wanted to be candidates in the 12th general election and only one counter was opened at the nomination centre, nevertheless, the responsibility for submitting the

nomination papers to the RO within the time frame lies with the candidates. No statutory duty is imposed on the RO to ensure that all nomination papers of all candidates present at the nomination centre must be accepted but only to ensure that no nomination papers are to be accepted after the time frame: reg 6(2A)(a) of the Regulations. So, in this case, the fault lies with the respondent for failing to deliver his nomination papers within the stipulated time to the RO.

[26] Thus, there had not been any failure on the part of the RO to comply with the election laws. Indeed, the RO had discharged his duties admirably well according to the law. Accordingly, we unanimously allow the appeal with costs here and in the court below. The deposit is to be returned to the appellant. The orders of the learned judge are set aside. We hereby hold that the appellant Tan Sri Joseph Kurup was duly elected to the parliamentary constituency of P182 Pensiangan.

Appeal allowed with costs here and court below.

Reported by Mashrifah Ravendran